

NO. 44772-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

VICTORIA JOLEEN PANGELINAN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-00148-7

BRIEF OF RESPONDENT

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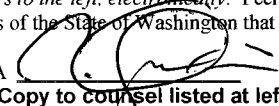
This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. *or, if an email address appears to the left, electronically.* I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED December 10, 2013, Port Orchard, WA 
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I. COUNTERSTATEMENT OF THE ISSUE

Whether evidence that Pangelinan, whose boyfriend was charged with the commercial sexual abuse of a minor, KH, got KH to agree to write a notarized statement saying that the Pangelinan's boyfriend was not involved in KH's prostitution activities was sufficient to support Pangelinan's conviction of witness tampering?

II. STATEMENT OF THE CASE

Victoria Pangelinan was charged by information filed in Kitsap County Superior Court with witness tampering. CP 1. Pangelinan waived her right to trial by jury and the case was heard by a judge. CP 102.

The judge found Pangelinan guilty and made the following unchallenged findings of fact:

I.

That on January 2, 2013, Allixzander Harris was charged with one count of Rape in the Second Degree. On January 18, 2013, Allixzander Harris was charged with Rape in the Second Degree, Human Trafficking in the Second Degree and Promoting Sexual Abuse of a Minor, a minor referred to by the initials of SD, which is listed in the Information regarding Count 3. In the attached probable cause statement to the Amender Information, a minor with the initials KH is identified.

II.

That from January through April 3, 2013, Allixzander Harris has been in custody at the Kitsap County Jail.

III.

That Sergeant Plumb's investigation of Allixzander

Harris' case in particular, but also this Defendant, has continued beyond the charging of Allixzander Harris that took place in January.

IV.

That as part of his investigation, Sergeant Plumb had communication with Trista Chisholm. Chisholm testified that she met with Allixzander Harris regarding two girls, identifying one as [S] and another whom she cannot remember her name. The purpose of the meeting with Allixzander Harris was to help him with the arrangement with the two girls, as well as providing him with how to keep the girls safe while they were prostituting.

V.

That Chisholm admitted that she was under the influence of methamphetamine, heroin, pills and marijuana during these described contacts. She also acknowledged that she derived the benefit of a reduced charge from the Prosecutor's office for testifying in this case.

VI.

That notwithstanding these legitimate issues of credibility, Judge Hull found Chisholm's testimony to be reliable and truthful because she spoke candidly with insight and knowledge about the business she is in (prostitution). Similarly, she was definitely blunt regarding her involvement in prostitution, which enhanced her credibility.

VII.

That while in custody, Allixzander Harris had recurring and frequent telephonic communication with the Defendant in this case, Victoria Pangelinan.

VIII.

That Sergeant Hall's testimony of the jail call recording system was credible and reliable.

IX.

That the testimony of Sergeant Plumb was highly credible and reliable because his testimony constitutes a sufficient basis to rely on the fact that the recorded jail

phone calls are, in fact, conversations between Allixzander Harris and the Defendant.

Based on Sergeant Plumb's testimony, there was substantial evidence provided beyond voice recognition. – the phone seized from the Defendant's person was searched, pursuant to a search warrant, and the jail calls were directly linked to the phone number of the Defendant in this case.

X.

That the jail call between Harris and the Defendant on January 4, 2013 at 2048 hours is relevant because Harris relays to the Defendant his Facebook account information, which allowed the Defendant to access Harris' Facebook account.

XI.

That the jail call between Harris and the Defendant on January 15, 2013 at 2216 hours is relevant because Harris refers to the other person on the phone as Victoria, which is further proof that Harris is speaking with the Defendant.

XII.

That the jail call between Harris and the Defendant on January 17, 2013 at 2144 hours is relevant, specifically the conversation on Page 6, Line 259 through Line 293 of the jail call transcript, which is State's Exhibit 4. [CP 153]

In this call, Harris says: "Yeah, um, okay. You know how, um – you know the one person that stayed the night that one time and their friend?" Answer from the Defendant: "Mmhmm." Harris then says: "Well, get ahold of them, not on Facebook and not on text message. You have to make sure you call them, not them call you. And maybe you can meet up with them, [sic] whatever it is. But make sure it's only on the phone and no one knows anything. And, um, you know, basically, say um, something. Basically just tell them, you know, that – " Answer from the Defendant: "I know I know." The Harris says: "So because that's just not your person that, um, you know, that could be you, that could be – that would be everyone." Defendant answers: "Yeah. Everybody would,

you know, mmhmm.” And Harris says: “And then, um, you know, that’s serious.” Defendant answers: “Yeah.” Harris says: “So long as they don’t, you know, basically say anything or they don’t want to get in trouble, then their best bet is just, no matter what, not say anything.” Defendant responds: “Yeah. So – “ Harris then says: “So but you need to – you need to be on that ASAP.” The Defendant says: “Okay.”

This is important evidence because it demonstrates that Harris was discussing with the Defendant the notion that witnesses are involved in this case should not say anything about what they know.

XIII.

That the jail call between Harris and the Defendant on January 20, 2013 at 2144 hours is relevant in pertinent part on Line 9, Page 393 in State’s Exhibit 6.^[1]

Specifically, Harris says to the Defendant: “So but you just gotta remember, nothing’s coming from me, because I don’t want – I’m not saying nothing to me, and I don’t want to say nothing to them. I know that I cant talk to them, so that’s all on everyone else.” Defendant says: “Okay.” Harris says: “So but don’t, um – you know, if you do get text messages, that would be cool too. But just make sure that – you know, talk with mom about what’s – what’s good and what’s not good, you know what I mean?” Defendant says: “Yeah.”

That conversation is circumstantial evidence that they’re continuing their discussions on what should or should not be said, as it related to people involved in the case.

XIV.

That State’s Exhibit 7, a conversation between Harris and the Defendant that occurred on January 20, 2013 at 2208 hours on Page 8, Line 321 is also relevant in this case. [CP 189]

Harris says: “Like, you gotta – I’m not saying erase things, because we need all that stuff. But make sure you’re

¹ It appears this should read “Page 9, Line 393.” See CP 178.

not threatening nobody on there and stuff like this and that. And, you know, just make sure the things that can help me what – what was needed. Um, you know, make sure that they're in – that – in your messages. Because if they're on your page, people will go and erase them if they get word of anybody looking at that. See, that's the one thing other people don't get. But its not just that person. The other person and all this other stuff that, like, we need – the kind of admissions, too, you know what I mean?" The Defendant says: "Yeah, I know."

* * *[2]

XVII.

That the underlying criminal case in which K.H. and S.D. were witnesses and Allixzander Harris was the defendant occurred in the State of Washington and was charged in Kitsap County. The witnesses in that case, including K.H., live in Washington. At the time that he defendant was contacting K.H., the Bremerton Police department was actively looking for K.H. to interview K.H. with regards to the information she had in this investigation. Allixzander Harris was in custody in the Kitsap County jail in Port Orchard, Washington when the Defendant was communicating with him via telephone. During these communications, Harris would direct the defendant on how to tamper with K.H. He first directed the defendant to tell K.H. not to say anything about her prostitution activities. The on-going criminal investigation of the case against Allixzander Harris was conducted by Sergeant Plumb who works for the Bremerton Police department in the State of Washington. The defendant was living in Bremerton, WA with Allixzander Harris' mother. The defendant directed K.H. to come to the defendant's home to produce statements to assist Allixzander Harris at trial. The Defendant was arrested prior to visiting Allixzander Harris at the Kitsap County jail in Port Orchard, Washington.

CP 103-07. Specific items of evidence will be addressed *infra*.

² Pangelinan assigns error to Findings XV and XVI. They will be addressed *infra*.

III. ARGUMENT

EVIDENCE THAT PANGELINAN, WHOSE BOYFRIEND WAS CHARGED WITH THE COMMERCIAL SEXUAL ABUSE OF A MINOR, KH, GOT KH TO AGREE TO WRITE A NOTARIZED STATEMENT SAYING THAT THE PANGELINAN'S BOYFRIEND WAS NOT INVOLVED IN KH'S PROSTITUTION ACTIVITIES WAS SUFFICIENT TO SUPPORT PANGELINAN'S CONVICTION OF WITNESS TAMPERING.

Pangelinan argues that the evidence was insufficient to support her conviction for witness tampering. This claim is without merit because the evidence showed that Pangelinan, whose boyfriend Allix Harris was charged with the commercial sexual abuse of a minor, KH, got KH to agree to write a notarized statement saying that the Pangelinan's boyfriend was not involved in KH's prostitution activities was sufficient to support Pangelinan's conviction of witness tampering.

It is a basic principle of law that the finder of fact at trial is the sole and exclusive judge of the evidence, and if the verdict is supported by substantial competent evidence it shall be upheld. *State v. Basford*, 76 Wn.2d 522, 530-31, 457 P.2d 1010 (1969). The appellate court is not free to weigh the evidence and decide whether it preponderates in favor of the verdict, even if the appellate court might have resolved the issues of fact differently. *Basford*, 76 Wn.2d at 530-31.

Challenges to the sufficiency of the evidence to sustain conviction in a bench trial require this Court to determine whether substantial

evidence supports the trial court's findings and whether the findings support the challenged conclusions of law. *State v. Rose*, 160 Wn. App. 29, 32, 246 P.3d 1277 (2011), *aff'd in part, rev'd in part*, 175 Wn.2d 10, (2012) A defendant challenging the sufficiency of evidence in a criminal case admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010).

Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). The party challenging a finding of fact bears the burden of demonstrating that it is not supported by substantial evidence. *State v. Vickers*, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). This Court "must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004). Further, circumstantial evidence is no less reliable than direct evidence. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

Pangelinan assigns error only to Findings of Fact XV and XVI. The remaining unchallenged findings of fact (which are set out in the Statement of the Case, *supra*) are verities on appeal. *Stevenson*, 128 Wn. App. at 193. The challenged findings provided:

XV

That in totality, the jail phone calls between Harris and the Defendant constitute clear and demonstrative evidence of the desire of both Harris and the Defendant's desire to take certain steps to see that Harris' legal predicament could be advantaged by contacting the witnesses in this case. In furtherance of this goal, the Defendant attempted to persuade KH to withhold relevant information from law enforcement by telling KH not to speak about how she was making her money.

XVI.

That State's Exhibit 11 [CP 194] was admitted and is relevant to the specific allegation as to whether the Defendant induced KH to withhold relevant information from law enforcement. Specifically, the Defendant tells KH on this Facebook posting: "I need you to say nothing about how you were making your money."

This statement is not ambiguous and can only be interpreted one way – that this Defendant was attempting to persuade KH not to provide information about how she was making her money (as a prostitute for Allixzander Harris) because that information would have direct, significant and negative consequences for Allixzander Harris and his pending charges.

CP 106-07. Despite her assignments of error, Pangelinan's argument does not really seem to challenge the factual basis for these findings, but instead argues that they are insufficient to support the conviction.

RCW 9A.72.120(1) provides:

A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

* * *

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

Pangelinan argues that the state failed to prove that she attempted to induce KH to withhold information from law enforcement. In making this argument, Pangelinan contends that her statements must be taken in context. Brief of Appellant, at 6. Curiously, however, she then focuses on one statement she made, but completely *out* of context. Taken in the context of several days' conversations among Pangelinan, Harris and KH, her inducement KH to withhold information from law enforcement becomes clear.

During December 2012 and January 2013, the police began investigating Allixzander Harris and several others for prostitution-related offenses. SD and KH, two of the prostitutes that were working for Harris, were minors. Police interviewed both girls and confirmed that they had worked as prostitutes for Harris and that Harris created the advertisements and took all the money that SD and KH received from the prostitution that they engaged in. CP 434-35.

Through the investigation, law enforcement discovered that Harris had a Facebook page and that KH was listed as one of his friends. RP 57.³ On January 20, 2013, while he was in custody, Pangelinan used Harris's

³ All references are to the multi-day report of proceedings beginning on March 22, 2013.

page to contact KH through Facebook:

Allixzander Harris: [KH] we are no longer friends and I no longer want anything at all to do with you. You're no longer apart of my family and I seriously need you to keep my name out your mouth. I need you to say nothing about how you were making your money. You and your best friend.

[KH]: I didn't know we were ever friends, haha

[KH]: but I need my bag of clothes nd shit, so yeah. I need that somehow!

[KH]: nd ill have yur back when I get my clothes! I hope I get my clothes back before the detectives come back to my house! Feel me?

Allixzander Harris: Are you threatening me. Wow. You're a fake BITCH and if you weren't a friend why would he give you a place to stay and or introduce you to his mother and babies Mamma. You're a snitch and you prostituted your damn self and you were proud of it. You've been going around telling people what you've been doing. So don't threaten me or my family. Watch your low blows because you most certainly don't want to go there with me.

Allixzander Harris: Are you sure your talking about a bag of clothes. Or are you talking about a guap of money that Allix never gave to you. But, meant to and he got locked up. I'm going to report your ass to cps and I will report your ass to the cops because I have witnesses who will state why you were doing what you were doing."

CP 224.

Later that same day, Harris called Pangelinan from the Kitsap

County Jail:

[Pangelinan]: Um, that person got a hold of me and tried to threaten me, so I told her what was up and I was just like well, don't threaten me because I'm not the one.

[Harris]: What do you mean, threaten you?

[Pangelinan]: She tried to threaten me.

[Harris]: Like as in what?

[Pangelinan]: As in oh well I'll go talk to them and whatever and put more lies on his ass and he can be in there longer.

[Harris]: Okay right there, um, did you text any of that?

[Pangelinan]: I didn't text any of that. She -- she was, um, she -- no, what she was doing was she got a hold of me through Facebook and I was like I'm not talking to you.

[Harris]: Did you guys do that on Facebook?

[Pangelinan]: No.

[Harris]: Damn it.

[Pangelinan]: I called her.

[Harris]: Um.

[Pangelinan]: But I have evidence that she's saying all that on Facebook. Because after I ...

[Harris]: Do you have evidence of her saying anything about she'll say more lies?

[Pangelinan]: Yeah.

[Harris]: Do you have that?

[Pangelinan]: Yeah.

[Harris]: Are you sure?

[Pangelinan]: Yes.

[Harris]: Okay.

[Pangelinan]: And then I have evidence saying that she did what she did willingly.

[Harris]: You have evidence of that?

[Pangelinan]: Yes.

[Harris]: Are you talking about the one that stayed the night, or the other one?

[Pangelinan]: The one that stayed the night because it's with her too.

[Harris]: Ok, but you have that on Facebook through?

[Pangelinan]: Yes, in the messages.

[Harris]: What you need to do is make sure there was nothing – nothing from you stating anything from me.

[Pangelinan]: Okay.

[Harris]: And make sure that's only you guys talking.

[Pangelinan]: Mm-hm.

[Harris]: Um, for – don't erase – make sure there's ...

[Pangelinan]: You know what she threatened me over? Her bag of clothes. She threatened me over her bag of clothes.

[Harris]: Okay, you need to talk to mom and figure out all the stuff that – you need to talk to Keilly too. That's what I really need to do is talk to Keilly.

[Pangelinan]: Mm-hm.

[Harris]: And, um, figure out all that stuff and get the stuff that would be bad. You know like the – you haven't said anything about me saying anything to them. So it's just you guys talking, right?

[Pangelinan]: Yeah, I haven't said anything about you at all to her.

[Harris]: Or anything from – coming from me, right?

[Pangelinan]: No.

[Harris]: Okay keep that evidence. Keep that evidence. Make sure it doesn't get erased. Um, you need to see if you can – at your work you need to print all that stuff out.

[Pangelinan]: Okay.

[Harris]: And, um, is there – is anything coming from the other one too?

[Pangelinan]: Um, no because she didn't really talk to me about it. She just said that there will be more charges.

[Harris]: Okay well ...

[Pangelinan]: She spoke to Andre about that.

[Harris]: Okay well you need to keep all that stuff and figure that out. Um, because if that's what people are trying to – because that's what I'm saying. If all this shit that they're trying to charge me with are all fucking bullshit ass fucking lies because that has to do with all of them. They're

the ones that did all that shit. I didn't help them. I didn't do none of that stuff. They stole my- all the credit cards. All that type of shit. So really it's them that was doing everything. And if we can get them ...

[Pangelinan]: Your credit card?

[Harris]: Not my credit card because I don't have a credit card but they used my card. That green dot card that I have?

[Pangelinan]: Yeah.

[Harris]: They used that and they used my cell phone for all that shit. You see what I'm saying? But then in – in the, um, in I didn't read all the police reports but in all that other stuff they're trying to say, they're trying to pin all that stuff that I'm doing that and all that stuff. But if you have that – that – that stuff that says that they're – they're talking about I'll throw more lies and stuff like that, oh they're fucked.

[Pangelinan]: Well yeah and I told her. I was like – and then she – she was saying who do you think they're gonna really believe? A 22-year-old with a record or a 16-year-old victim? And then I was like when were you a victim?

[Harris]: Okay. Okay. Do you have that on – on MySpace?

[Pangelinan]: On Facebook, yeah.

[Harris]: Okay, keep all that stuff. You know, and a matter of fact as long as you're not – you can – you – you don't have no restraining orders against them. You can talk to her and the other one and everybody else. You – you – you do that and just say a whole bunch of whatever and see what they're gonna say. That type of shit. Make sure that all the doors are locked and that type of shit.

[Pangelinan]: Mm-hm.

[Harris]: And, uh, you already know if it comes down to it. You know, those people come to your house that you know that you can, uh, K-I-L-L if they're threatening you.

[Pangelinan]: Yeah.

[Harris]: Like a Private – okay, so you already know about that. Um, you need to be careful and talk to mom about that

same stuff and talk to Keilly about that same stuff but keep all that evidence.

[Pangelinan]: I will.

[Harris]: Because that right there will show that they're fucking lying and that's the whole thing about it. I'm not saying nothing because I – like I said, I didn't do none of this bullshit out of those three charges that they was trying to hit me with. So when it shows all that shit. All that is gonna happen is that those girls are gonna get in trouble for stealing, uh, my card, my phone and all that type of shit. So you need to keep all that. Um, if you can – if you can – yeah, keep all that. If you can – don't. ..

[Pangelinan]: And you know what?

[Harris]: (Unintelligible).

[Pangelinan]: It's a felony to swipe someone's card without their permission.

[Harris]: Exactly what I'm saying. So I'm not saying that, uh, I'm not asking you to talk to them. If you take it up on your own, that's on you which you know what I'm saying.

[Pangelinan]: Yeah.

[Harris]: And if you can get that other person and them to admit that they're fucking lying, which is what they are doing, then that will help out.

[Pangelinan]: I know.

[Harris]: So but you just gotta remember, nothing's coming from me because I don't w – I'm not saying nothing to me and I don't want to say nothing to them. I know that I can't talk to them so that's all on everything else.

[Pangelinan]: Okay.

[Harris]: So, but don't, um, you know if you do get text messages, that would be cool too. But just make sure that, you know, talk to mom about what's – what's good and what's not good, you know what I mean?

[Pangelinan]: Yeah.

CP 174-78.

The day after Pangelinan's jail conversation with Harris, Pangelinan sent several text messages to KH agreeing to give back her clothes and also give her the money that Harris owed KH for the prostitution that KH participated in. CP 401. She told KH that Harris was looking at 10 years to life in prison. *Id.* KH agreed to do everything in her power to help Harris out. *Id.* A few hours later, Pangelinan told KH:

Oh ok. I was just wondering because from my understanding she told me that she had a No Contact Order between her and him because everytime she got in trouble she was with him. And then, Andre called me and said he spoke with her and said that the prosecutor had new evidence that came from his phone of pictures and text messages of you two prostituting. So Allix is being charged with Human trafficking because of the evidence they found of you and [SD]. That's why the Detectives wanted to get a statement from you. *Which if that's the case all we would need from you would be a statement in regards to all that not being true.* Because the charges are regarding you and [SD] so I don't know what she's saying to the detectives but I will speak with his attorney and see what the police reports say because if [SD] gave a statement. Then, what she said would be on the police reports.

CP 403 (emphasis supplied). KH responded:

I'll Say I Was Just Using His Phone.. I'm Pretty SURE I Can't Get in That Much Trouble Since I Only Hoed Like 2 Times Nd I Dont Anymore. Sooo.. Yeah. Imma Make Sure He Gets Outta There ASAP, Imma Try!

Id. Pangelinan went on to reassure KH that she did not think KH would be charged with any crimes if she admitted to prostituting herself. *Id.* Later on in that same conversation, Pangelinan asked KH and SD to write statements denying Harris's involvement in KH and SD's prostitution. CP

406.

Finally, Pangelinan's other texts to her friend Katelynn make it clear that she knew that she was asking KH to make a false statement. At 5:17 on January 22, 2013 she typed:

The other girls are 16 year olds. There names are [KH] and [S] D. I know her last name. But, I can't ever remember how to spell it.

CP 416. Two minutes later, she added:

Well, hopefully it won't be for too long and I am just hoping we can do our best to gather this much needed evidence from these girls that are trying to put our men behind bars.

Id. Less than an hour later, she tells Katelynn:

I honestly hate it and it makes me sick to my stomach that Allix would rather be in the streets chasing a dollar sign and kickin it all night with some ratchet ass hoe over spending time with his family and trying to make it work between his self and I. Then, to top it off when he gets in trouble I am the first person he thinks to call.

Id.

Pangelinan relies on *State v. Rempel*, 114 Wn.2d 77, 83-84, 785 P.2d 1134 (1990), in support of her insufficiency claim. *Rempel* is clearly distinguishable.

In *Rempel*, the defendant told the victim that he was sorry and asked the victim to drop the charges against him. *Rempel*, 114 Wn.2d at 81-82. The victim told the defendant that she didn't have any control over the charges. The Court noted "the words 'drop the charges' reflect a lay

person's perception that the complaining witness can cause a prosecution to be discontinued." *Rempel*, 114 Wn.2d at 83. The Court went on to note that those words, under some circumstances could be sufficient evidence for witness tampering: "the State is entitled to rely on the inferential meaning of the words and the context in which they were used." *Rempel*, 114 Wn.2d at 83-84.

More on point here is *State v. Williamson*, 131 Wn. App. 1, 86 P.3d 1221 (2005). In that case, the Court found that the evidence was sufficient where the defendant asked the victim to take back her previous statement and told the victim that the defendant and the victim's mother would go to jail if she did not recant. The Court in that case noted that the defendant specifically asked her to take back her statement and coupled that with adverse consequences if she did not. *Williamson*, 131 Wn. App. at 6. The Court discussed *Rempel* and noted that the defendant in *Williamson* went beyond the message relayed in *Rempel*.

Similarly, in *State v. Gill*, 103 Wn. App. 435, 13 P.3d 646 (2000), this Court found that the phrase "a witness might seek to get the charges dropped, *however she can*" was sufficient to support a conviction for witness tampering. *Gill*, 103 Wn. App. at 446 (emphasis the Court's). This statement coupled with threats to bring criminal charges against the victim and seek revenge were sufficient evidence.

This case is strikingly similar to *Gill* and *Williamson*. As in *Gill*, Pangelinan coupled her request for KH to not discuss the case, with a threat to call CPS on KH.⁴ After the defendant requested KH to not talk about the prostitution activities, KH specifically mentioned that she might talk to a detective if she did not get her clothes back. This apparently made Pangelinan angry, because she threatened to call CPS on the victim because of her statements and then specifically spelled out what she had previously been hiding in her words and that is that the conversation is about KH's prostitution. The defendant further clarified this the next day when the two spoke via text message.

In addition, the very next day, the defendant asked KH to write a statement saying that Harris was not involved in KH's prostitution activities. These statements clearly go beyond what the defendant said in the *Rempel* case.

As in *Williams*, Pangelinan sent several text messages the next day that told KH the amount of time Harris was looking at as she tried to convince KH to write a statement saying that Harris was not involved in her prostitution. KH then suggested a story as to how her prostitution activities would have been discovered on Harris' phone if Harris was not

⁴ Pangelinan asserts that the trial court found that "there was no threat or promise of reward of any kind. 3RP 185." Brief of Appellant, at 7. This is incorrect. The court observed that there was no threat *of violence*. RP 185.

involved. The phrasing that she uses suggests that it is not a truthful statement: (I'll just say...), but rather a statement designed to help Harris out. *See also State v. Lobe*, 140 Wn. App. 897, 902, 167 P.3d 627 (2007) (evidence where defendant told witness not to give information to prosecution).

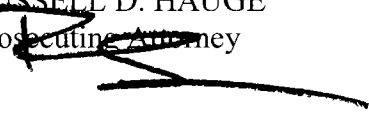
Pangelinan misses the point of *Rempel*. The significance of that case is that the statute requires the defendant to attempt to convince the witness to withhold or testify falsely, not simply have an opinion on whether the case should be charged. Pangelinan's conduct clearly crossed that line. She first asked KH to withhold information and then asked her to write a statement exonerating Harris in the prostitution activities that KH was involved in. This behavior is the exact behavior that is described in the witness tampering statute. Pangelinan's conviction should be affirmed.

IV. CONCLUSION

For the foregoing reasons, Pangelinan's conviction and sentence should be affirmed.

DATED December 10, 2013.

Respectfully submitted,
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Prosecuting Attorney



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December 10, 2013 - 2:43 PM

Transmittal Letter

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